

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,	)	
	)	
and	)	
	)	
THE STATE OF INDIANA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	
	)	
TOWN OF NEWBURGH, INDIANA,	)	
A Municipal Corporation,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

The United States of America (the "United States"), by authority of the Attorney General of the United States, and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Indiana (the "State"), by authority of the Attorney General of the State of Indiana, and on behalf of the Commissioner of the Indiana Department of Environmental Management ("IDEM"), allege the following:

NATURE OF ACTION

1. This is a civil action brought by the United States and the State pursuant to Section 309(b) and (d) of the Clean Water Act ("CWA" or "Act")), 33 U.S.C. § 1319(b) and (d), for injunctive relief and assessment of civil penalties against the Town of Newburgh, Indiana ("Newburgh"), for the discharge of pollutants into the navigable waters of the United States and the State from Newburgh's wastewater collection system and wastewater treatment plant in

violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the Town of Newburgh's National Pollutant Discharge Elimination System ("NPDES") Permit. The State of Indiana ("Indiana") is a plaintiff to this action pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e), and Section 505 of the CWA, 33 U.S.C. § 1365. IDEM is charged with the administration and enforcement of the requirements of the CWA in and for the State of Indiana. Indiana Code § 13-13-5-1(1).

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, 1367(a), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

3. Venue is proper in the Southern District of Indiana pursuant to 28 U.S.C. §§ 1391(b) and (c), 1395(a), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), because Newburgh is located in this district and the causes of action alleged in this complaint arose in this district.

#### NOTICE

4. The United States has provided notice of the commencement of this action to Indiana pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

#### DEFENDANT

5. Newburgh is a municipal corporation organized under the laws of Indiana and is located in Warrick County, Indiana. Newburgh is a "municipality" and a "person" within the meaning of Section 502(4) and (5) of the CWA, 33 U.S.C. § 1362(4) and (5).

6. Newburgh owns, operates and maintains a wastewater collection system ("Newburgh collection system"), which collects wastewater from residential, commercial, and industrial sources for the purpose of transporting that wastewater to a wastewater treatment plant

(the “Newburgh WWTP”), located ½ mile north of S.R. 66 on Vanada Road in Newburgh, Indiana.

7. At times relevant to this complaint, Newburgh discharged “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12), through “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), into Cypress Creek, a tributary to the Ohio River.

8. At times relevant to this complaint, Newburgh discharged and continues to discharge “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12), through “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to the Ohio River.

9. Cypress Creek and the Ohio River are each “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

#### STATUTORY BACKGROUND

10. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” into navigable waters by any person except, inter alia, in compliance with a NPDES permit issued by EPA or an authorized state, such as Indiana, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

11. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the permit issuing authority, EPA, or an authorized state, shall, in issuing NPDES permits, prescribe the conditions for such permits as it determines are necessary to carry out the provisions of the Act.

12. At all times relevant to this complaint, IDEM has been and continues to be authorized by the Administrator of EPA to administer the NPDES permit program for discharges into navigable waters within its jurisdiction, pursuant to Section 402(b) of the CWA, 33 U.S.C. §

1342(b).

13. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. Part 19, Newburgh is subject to injunctive relief and is liable for civil penalties not to exceed \$25,000 for each day of each violation of the Act occurring on or prior to January 30, 1997, \$27,500 for each day of violation of the Act occurring on or after January 31, 1997, through March 15, 2004, and \$32,500 for each day of violation of the Act occurring on or after March 16, 2004.

#### GENERAL ALLEGATIONS

14. On or about August 16, 1991, IDEM, under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), issued Final NPDES Permit No. IN 0023892 (the “1991 Permit”) to Newburgh. The 1991 Permit became effective on October 1, 1991. On or about August 12, 1998, IDEM issued Newburgh a new permit, Final NPDES Permit No. IN 0023892, effective September 1, 1998 (the “1998 Permit”). The 1998 Permit was amended as of July 24, 2000. On or about June 10, 2005, IDEM issued Newburgh a new permit, Final NPDES Permit No. IN 0023892, effective July 1, 2005 (the “2005 Permit”). The 2005 Permit is currently in effect.

15. The 1991 Permit and the 1998 Permit authorized Newburgh to discharge pollutants into the Ohio River and Cypress Creek through specified outfalls in accordance with specific effluent limitations, sampling requirements, and other terms and conditions.

#### FIRST CLAIM FOR RELIEF – Effluent Limitation Violations

16. The United States and Indiana incorporate herein the allegations contained in paragraphs 1 through 15 of this complaint.

17. Outfalls 001 and 011 at the Newburgh WWTP are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Since at least May 1996, Newburgh has discharged pollutants from outfall 001 at the Newburgh WWTP into the Ohio River. From at least May 1996 through April 1999, Newburgh discharged pollutants from outfall 011 at the Newburgh WWTP into Cypress Creek. The discharges from outfall 001 and outfall 011 contained one or more pollutants in excess of the effluent limitations established in the 1991 and 1998 Permits for E. coli, carbonaceous biochemical oxygen demand, suspended solids, ammonia-nitrogen, dissolved oxygen, and residual chlorine.

19. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. part 19, Newburgh is subject to injunctive relief and is liable for civil penalties not to exceed \$25,000 for each day of each violation of the Act occurring on or prior to January 30, 1997, \$27,500 for each day of violation of the Act occurring on or after January 31, 1997, through March 15, 2004, and \$32,500 for each day of violation of the Act occurring on or after March 16, 2004.

SECOND CLAIM FOR RELIEF – Prohibited Discharges under the 1991 Permit

20. The United States and Indiana incorporate herein the allegations contained in paragraphs 1 through 15 of this complaint.

21. Newburgh's 1991 Permit specifically prohibited discharges from eight overflow points within its sanitary sewer system: overflow points 003, 004, 005, 006, 007, 008, 009, and 010. These overflow points are "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. On various dates since May 1996 through August 1998, Newburgh discharged raw sewage from overflow point 009 into an unnamed tributary of the Ohio River.

23. The discharges described in Paragraph 22 are "pollutants" within the meaning of

Section 502(6) of the Act, 33 U.S.C. § 1362(6).

24. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. Part 19, Newburgh is liable for civil penalties not to exceed \$25,000 for each day of each violation of the Act occurring on or prior to January 30, 1997, \$27,500 for each day of violation of the Act occurring on or after January 31, 1997, through March 15, 2004, and \$32,500 for each day of violation of the Act occurring on or after March 16, 2004.

THIRD CLAIM FOR RELIEF – Unauthorized Discharges under the 1998 Permit

25. The United States and Indiana incorporate herein the allegations contained in paragraphs 1 through 15 of this complaint.

26. On various dates since September 1, 1998, Newburgh discharged raw sewage from Outfall 009 into an unnamed tributary of the Ohio River.

27. The discharges described in Paragraph 26 were not authorized by Newburgh's 1998 Permit.

28. Outfall 009 is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

29. The discharges described in Paragraph 26 are "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

30. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. Part 19, Newburgh is subject to injunctive relief and is liable for civil penalties not to exceed \$25,000 for each day of each violation of the Act occurring on or prior to January 30, 1997, \$27,500 for each day of violation of the Act occurring on or after January 31, 1997, through March 15, 2004, and \$32,500 for each day of violation of the Act occurring on or after March 16, 2004.

#### FOURTH CLAIM FOR RELIEF

31. The United States and Indiana incorporate herein those allegations contained in paragraphs 1 through 16 of this complaint.

32. Since at least May 1996 through at least February 1998, Newburgh failed to monitor various parameters at the frequency required by its 1991 Permit.

33. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. Part 19, Newburgh is liable for civil penalties not to exceed \$25,000 for each day of each violation of the Act occurring on or prior to January 30, 1997, \$27,500 for each day of violation of the Act occurring on or after January 31, 1997, through March 15, 2004, and \$32,500 for each day of violation of the Act occurring on or after March 16, 2004.

WHEREFORE, the plaintiffs, the United States of America and the State of Indiana, pray that the Court:

(1) Order Newburgh to comply continuously with all terms and conditions of its NPDES Permit and the Clean Water Act, as well as any successor to NPDES Permit No. IN 0023892;

(2) Grant the United States and Indiana such additional injunctive relief as this Court deems appropriate to insure full compliance with Defendant's Permit and the Act;

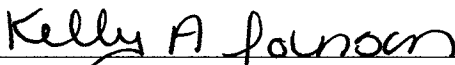
(3) Assess civil penalties against Newburgh not to exceed \$25,000 for each day of each violation of the Act occurring on or prior to January 30, 1997, \$27,500 for each day of

violation of the Act occurring on or after January 31, 1997, through March 15, 2004, and \$32,500 for each day of violation of the Act occurring on or after March 16, 2004; and

- (4) Grant the plaintiffs such further relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES



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